



2008 President Benjamin Harrison Day at the State House
 Teacher Background Material
Ex Parte Milligan

Relevant Indiana State Social Studies Standards*

Standard 1 *History*

- The Civil War (Indiana and the nation)
- Indiana History

Standard 2 *Civics and Government*

- Structure of the Indiana judicial branch
- The Indiana Constitution
- The United States Constitution
- The Bill of Rights (especially 1st Amendment and 5th Amendment)
- The U.S. Supreme Court

Standard 5 *Individuals, Society, and Culture*

- Changing societal ideas about the rights of individuals versus the rights of the general public and public safety—especially regarding freedom of speech during wartime

*suggestions for application to state math and language arts standards can be found at the end of this document

Ex Parte Milligan: Case Summary

Lambdin Milligan lived near Fort Wayne, Indiana, and he opposed both President Lincoln and the Civil War. He was very outspoken in his opposition, and after a speech urging people to resist being drafted into the army, he was arrested and brought to Indianapolis for trial. Milligan was arrested by the military and charged with treason. His trial was held before a military tribunal. He was found guilty and sentenced to death. Milligan successfully appealed his case to the U. S. Supreme Court. Following the decision of the U.S. Supreme Court, Milligan returned to Indiana for a third and final trial.

This material was prepared by Dr. Elizabeth R. Osborn, Special Assistant to the Chief Justice for Court History and Public Education. If you have any questions about this material, or any of the programs in the “Courts in the Classroom” project, please feel free to contact her (317) 233-8682 or eosborn@courts.state.in.us.

Timeline of *Ex Parte Milligan* (and related events)

1860: Lincoln elected President

1861: Civil War begins

Late 1864: Milligan tried by military tribunal in Indianapolis. Found guilty of treason and sentenced to death.

1865: Civil War ends

1866: case is heard by the U.S. Supreme Court

1871: Milligan files a civil case back in Indiana. He sued people associated with his original military trial.

Vocabulary (listed as it appears in the script)

MILITARY TRIBUNAL: A court where military officers serve as judge and jury. Sometimes they are held in secret.

DRAFT: To make or force someone to go into the military.

UNION SOLDIER: Soldiers who fought for the northern states (President Lincoln) during the Civil War.

TREASON: Betraying or trying to cause harm to the United States of America. This crime is punishable by death.

UNITED STATES SUPREME COURT: The highest court in the United States. It is located in Washington D. C.

APPEAL: to have a higher court review the ruling of a lower court. You only do this if you are unhappy with the decision from the first court.

Key Figures in the Play

LAMBDIN MILLIGAN: person accused of treason against the U.S. government during the Civil War because of his opposition to the draft. It is his three court appearances that are the focus of the script. He is from Huntington, Indiana (a small town outside Fort Wayne).

BENJAMIN HARRISON: Lawyer chosen to defend Hovey, Morton, and Spooner in the last trial—a civil trial held in Indianapolis in 1871. Harrison worked for the Indiana Supreme Court before the Civil War, and later became the only Hoosier (so far) to be elected U.S. President. Following his time in the White House, he returned to his private law practice in Indianapolis.

OLIVER P. MORTON: Much beloved Governor of Indiana during the Civil War. Milligan sues him and everyone else involved with his original arrest and trial.

ALVIN HOVEY: Served as a Judge on the Indiana Supreme Court. Was one of the officers on the military tribunal that found Milligan guilty of treason. Later was Governor of Indiana. Along with Oliver Morton and Benjamin Spooner he is sued by Milligan.

THOMAS HENDRICKS: Famous Indiana lawyer, Governor, and Vice-President of the United States. He was Milligan's lawyer in the final trial.

GENERAL BEN SPOONER: Union army general who was on the military tribunal with Hovey, and one of the people sued by Milligan in the civil case back in Indianapolis.

ABRAHAM LINCOLN: 16th President of the United States who led the Union during the Civil War. Signed the Emancipation Proclamation and wrote the Gettysburg Address. Assassinated by John Wilkes Booth 5 days after the Civil War ended.

OSCAR HORD: Originally from Kentucky, Hord became the first partner of Thomas Hendricks' law firm in 1863. Previous to joining Hendricks, he had been Indiana Attorney General. Hord is noted for his broad knowledge of the law. The firm of Hendricks and Hord has evolved into what is now Baker and Daniels.

ABRAHAM HENDRICKS: Abram Hendricks is the son of Indiana's third governor, William Hendricks. He was part of Indiana's House of Representatives and a major in the U.S. Army during the Civil War before becoming a partner in a law firm with his cousin Thomas Hendricks in 1867. Hendricks was secretary of the Committee of Safety during the Indianapolis Railroad strike of 1877.

ALBERT PORTER: Albert Porter started his political career as a private secretary to Governor Whitcomb and continued as a both reporter of the Indiana Supreme Court in 1853 and a member of Congress in 1859. Porter was a lawyer with the law firm of Porter, Harrison, and Hines during this 1871 case. He also held the position of governor of Indiana, the first comptroller of the United States Treasury, and U.S. minister to Italy.

CYRUS HINES: Born in New York, Hines came to Indiana in 1854. He enlisted in the 11th Indiana Volunteers in 1861, but resigned, after reaching the rank of Colonel, because of injuries in 1862. Hines was judge of the judicial circuit comprising Marion, Hendricks, and Johnson counties before joining the law firm of Porter, Harrison, and Hines. Hines left the practice in 1884 to care for his sick brother and his estate.

SALMON CHASE: Salmon Chase served as a U.S. Senator from Ohio, Governor of Ohio, and the Secretary of the Treasury under President Lincoln. He was Chief Justice of the U.S. Supreme Court from 1864 to 1873. Chase authored the concurring opinion in the case of *Ex Parte Milligan*. As a member of the Supreme Court, he worked on cases dealing with the Civil War, Reconstruction, and government finance.

DAVID DAVIS: David Davis served as an Associate Justice of the U.S. Supreme Court from 1862 until 1877. He authored the opinion in *Ex Parte Milligan*. Davis was a United States senator, a member of the Illinois House of Representatives, a judge of Illinois' Eighth Judicial Circuit, and a great assistant in Lincoln's presidential campaign in 1860.

JAMES WAYNE: James Wayne served as an Associate Justice of the U.S. Supreme Court from 1835 until 1867. During his life, he also served as a captain in the War of 1812, mayor of Savannah, a member in the Georgia and U.S. House of Representatives, and judge of the superior court in Georgia. Wayne shared President Jackson's strong federalist view and had a specialty in the law of the seas.

SAMUEL MILLER: Samuel Miller served as an Associate Justice of the U.S. Supreme Court from 1862 until 1877. He was known for his opinions in cases dealing with race and the Fourteenth Amendment. Miller was a supporter of Lincoln's decision to suspend the writ of habeas corpus, which allowed blacks to be brought to court to determine if they were being imprisoned lawfully.

ANDREW JOHNSON: Andrew Johnson became the 17th President of the United States when President Lincoln was assassinated. He completed the second of Lincoln's two terms in 1865, but failed to receive his party's nomination in 1869. Johnson's administration saw the inclusion of the 13th Amendment abolishing slavery and the 14th Amendment providing for equal protection by law of all citizens.

JEREMIAH BLACK: Jeremiah Black was one of the attorneys representing Milligan before the U.S. Supreme Court. He was previously a reporter for the U.S. Supreme Court, a justice on the Pennsylvania's Supreme Court, and a judge of the district court for his county.

ATTORNEY GENERAL JAMES SPEED: James Speed was Attorney General from 1864 until 1866. He was responsible for defending the administration's policies on habeas corpus and military trials. Speed also served as a member of the Kentucky House of Representatives, a member of the Kentucky Senate, and as a professor of law at the University of Louisville.

Student Roles

Applause cards (2)

Scene Cards

Date: 1864

Text: Indianapolis, Indiana

Date: 1866

Text: Washington DC

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Picture: U.S. Supreme Court

Date: 1871

Picture: First Indianapolis State Capitol Building.

Text: Indianapolis, Indiana

Text: Military Tribunal Week 1

Text: Military Tribunal Week 2

Text: Military Tribunal Week 3

Character Parts – listed in order from least amount of lines to most amount of lines

Person to ring the bell before telegram is read

4 other defendants

Telegram delivery person

President Abraham Lincoln

President Andrew Johnson

6 Union Soldiers for the military tribunal. One of the soldiers should be assigned the role of Alvin Hovey

Bailiff

6 jury members

4 Justices of the U.S. Supreme Court – Chief Justice Salmon Chase, Justice David Davis, Justice James Wayne, and Justice Samuel Miller

General Benjamin Spooner

Alvin P. Hovey (choose different student than Alvin Hovey of the Union Soldiers.)

Oliver P. Morton

Jeremiah Black

Attorney General Speed

Thomas Hendricks

Abram Hendricks

Oscar Hord

Benjamin Harrison

Albert Porter

Cyrus Hines

Biography Cards

Thomas Hendricks
 General Alvin Hovey
 Governor Oliver P. Morton
 President Abraham Lincoln
 Benjamin Harrison

Definition Cards

Appeal
 Draft
 Military tribunal
 Treason
 Union soldier
 US Supreme Ct

Props Used for Character Parts

Soldier Hats
 2 Abraham Lincoln Hats
 4 Robes for Justices
 Gavel for Bailiff
 Blazer for Bailiff
 Bell
 Telegram
 Justice faceplates
 Bowler Hats
 Bow Ties
 Money

Large Speaking Roles

Lambin Milligan (central role, provides most of the pertinent information; suggest an adult facilitator)*

Narrator (central role, provides pertinent details and other information; suggest an adult facilitator)*

*When this is performed in the courtroom we usually ask court staff to volunteer for these roles. Could easily be assigned to a student.

FOR STUDENTS WITH NO OTHER ROLE IN THE PLAY: Passing out a 3x5 card, direct these students to write down one question for the discussion portion of the play. They might want to ask the moderator questions about the military trying civilians, freedom of speech and so forth.

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Follow-up Questions

1. What is the significance of the jury awarding Milligan only \$5. What message do you think the jury was trying to send?
2. Do you think there should be any limits on a person's ability to say what he wants in public (1st Amendment freedom of speech)? If so, under what conditions?
3. Each of Milligan's 3 courtroom appearances represent a different type of legal action: a criminal trial (the first military tribunal), an appeal (the case before the U.S. Supreme Court), and a civil case (the final trial back in Indianapolis). Discuss how each of these legal actions is different.

The Criminal Trial: In criminal cases the defendant has been charged with a specific crime. The opposition (the prosecutor) is always the government (either local, county, state, or national). Each side presents evidence, calls witnesses, and tries to convince the judge and/or jury that they are correct. If found guilty the defendant is often sentenced to jail.

An Appeal: The losing party in either a criminal or civil case may appeal the decision of the lower court. The losing party asks a higher court (in Milligan's case the U.S. Supreme Court) to review their case. There are usually several levels of appellate courts and very specific rules to follow when filing an appeal. In appellate cases there are no witnesses called, no evidence presented, or juries. A panel of judges usually hears the appeal.

The Civil Trial: A civil case is usually a lawsuit between individuals. The person bringing the suit alleges that the other has done something wrong and should make some sort of restitution (pay damages, for example). As in criminal cases, both sides present evidence, call witnesses, and try to convince the judge and/or jury that they are correct.

Related Indiana State Standards

Activities related to the case of *Ex Parte Milligan* can easily be expanded to encompass standards from multiple subject areas other than social studies. A few examples are provided below.

Math:

Standard 7 Problem Solving

- How far is it from Indianapolis, Indiana (site of tribunal and civil trial) to Washington DC (location of US Supreme Court)?
- How long would it have taken Milligan to get to Washington DC if he was traveling on a train going approximately 35 miles per hour?

- How long would it have taken Milligan to get to Washington DC if he was traveling by horseback covering about 50 miles per day?
- How long would it take Milligan to get to Washington DC if he was traveling today on a commercial airplane going approximately 400 miles per hour?
- Milligan was awarded \$5 by the jury in his final courtroom appearance. The value of money changes over time. For example, \$5 would have bought you a lot more at McDonalds 20 years ago than it would today. How much was \$5 in 1871 worth in 1971? How about in 2007?

English/Language Arts:

Standard 4 and 5 Writing: Process and Application

- Have students respond to the military tribunal's verdict sentencing Milligan to death. Do they think a military tribunal is an appropriate venue for trying a civilian during wartime? Have them explain their answer.
- Ask students to provide their own verdict in the case.
- Discuss why the jury might have chosen to award Milligan only \$5.

Standard 7 Listening and Speaking: Skills, Strategies, and Application

- Have students act out scenes from Ex parte Milligan.
- Have students write their own scenes. For example, Milligan explaining to his wife and family why he is so strongly opposed to the draft.
- Have students, as if they were Milligan, write to President Lincoln asking him to stay the execution.